Kopeks Holdings Sdn Bhd v Bank Islam Malaysia Bhd

HIGH COURT (KOTA KINABALU) — SUIT NO K22(A)01 OF 2004
ABDUL RAHMAN SEBLI JC
7 SEPTEMBER 2009

Banking — Securities for advances — Charge — Whether financial institutions prohibited from giving credit facility without security — Banking and Financial Institutions Act 1989 s 60(1)

Contract — Formation — Valid and binding agreement — Borrower commenced work in reliance of letter of offer — Whether contract formed despite non-execution of formal agreement — Whether improbable for banking institution to enter into agreement without finalising legal documentation — Whether valid contract formed

Contract — Offer — Conditional offer — Offer letter issued for banking facilities — Whether offer subject to fulfillment of condition precedent — Whether borrower's acceptance of offer absolute and unqualified — Whether bank entitled to cancel banking facility

By a letter dated 11 August 2001 the defendant offered banking facilities to the plaintiff for redeeming two charged land titles and to part finance development on the said lands. The plaintiff accepted the offer. At the plaintiff's request, the offer was subsequently amended. The defendant later discovered that one of the landed properties had been charged to Maybank and this was never revealed by the plaintiff to the defendant earlier. The plaintiff had commenced preliminary works on the site in reliance upon the letters of offer despite the fact that no formal written agreement was executed. The defendant subsequently informed the plaintiff that the facilities were withdrawn and cancelled. The legal and security documents had not been signed at the time of the cancellation and the facilities had not been disbursed. Due to the cancellation of the facilities, the plaintiff could not purchase the lands and therefore had to abandon the housing development. The plaintiff commenced this action claiming for the losses suffered. The issue which arose was whether the defendant was in breach of contract when it cancelled the facilities. The plaintiff claimed that if a bank offers a loan to its customer for a specific purpose and the customer accepts the offer, a contract of loan is created and the bank is bound by such contract and if the

bank later refuses to sign the loan documents, the bank is liable to compensate the customer for the losses suffered.

Held, dismissing the plaintiff's claim with costs:

(1) Since the parties' expressed intention was that the agreement was subject to the execution of the legal documents a legally binding contract could only come into existence if this condition precedent had been fulfilled. Until then the two letters of offer remained expressions of willingness on the part of the defendant to offer banking facilities to the plaintiff. The plaintiff's acceptance of the letters of offer would only bind the defendant if and when the conditions precedent had been fulfilled (see paras 20 & 22).

(2) It was improbable that a banking institution like the defendant would have agreed to enter into an agreement without finalising the legal documentations. The offer letters were clearly subject to the fulfillment of the conditions precedent. The parties were still in negotiation when the facility was cancelled by the defendant although the letters of offer had been accepted by the plaintiff. No final agreement had been reached between the plaintiff and the defendant. The plaintiff's acceptance of the offer was not absolute and unqualified to convert the defendant's proposal into a promise (see paras 27 & 34).

(3) The security documents had not been executed between the parties. Section 60(1) of the Banking and Financial Institutions Act 1989 ('BAFIA') prohibits any financial institution from giving credit facility without security. The defendant would be in breach of BAFIA if it were to go ahead with the contract without security (see para 35).

[Bahasa Malaysia summary

Melalui surat bertarikh 11 Ogos 2001 defendan menawarkan kemudahan perbankan kepada plaintif untuk menebus dua bidang hakmilik tanah yang telah digadai dan sebahagiannya untuk membiayai pembangunan di atas tanah tersebut. Plaintif menerima tawaran tersebut. Atas permintaan plaintif, tawaran tersebut kemudiannya dipinda. Defendan kemudiannya mendapati bahawa salah satu daripada tanah harta tersebut digadai kepada Maybank dan ini tidak pernah didedahkan oleh plaintif kepada defendan dari awal lagi. Plaintif memulakan kerja-kerja persediaan pada tapak dengan bergantung kepada surat tawaran walaupun tiada perjanjian formal secara bertulis dibuat. Defendan kemudiannya memaklumkan plaintif bahawa kemudahan tersebut ditarik balik dan dibatalkan. Dokumen-dokumen guaman dan cagaran belum lagi ditandatangani pada masa pembatalan dan kemudahan-kemudahan belum lagi dibayar. Oleh kerana pembatalan

kemudahan-kemudahan, plaintif tidak dapat membeli tanah tersebut dan oleh itu perlu melepaskan pembangunan perumahan. Plaintif memulakan tindakan ini menuntut untuk kerugian yang dialami. Isu yang timbul adalah sama ada defendan melanggar kontrak apabila dia membatalkan kemudahan-kemudahan. Plaintif mendakwa bahawa sekiranya bank menawarkan pinjaman kepada pelanggannya untuk tujuan khusus dan pelanggannya menerima tawaran tersebut, satu kontrak pinjaman telah diwujudkan dan bank terikat dengan kontrak tersebut dan sekiranya bank kemudiannya enggan menandatangani dokumen-dokumen pinjaman, bank tersebut bertanggungan untuk membayar ganti rugi kepada pelanggannya untuk kerugian yang dialami.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Memandangkan tujuan khusus pihak-pihak ialah bahawa perjanjian tersebut tertakluk kepada penyempurnaan dokumen-dokumen guaman, kontrak sah yang mengikat hanya boleh wujud sekiranya syarat terdahulu dipenuhi. Sehingga itu, dua surat tawaran tersebut kekal menjadi pernyataan kesanggupan bagi pihak defendan untuk menawarkan kemudahan-kemudahan perbankan kepada plaintif. Penerimaan plaintif terhadap surat tawaran hanya mengikat defendan sekiranya dan apabila syarat-syarat terdahulu dipenuhi (lihat perenggan 20 & 22)

(2) Adalah tidak munasabah bahawa satu institusi perbankan seperti defendan akan bersetuju untuk menandatangani perjanjian tanpa menyelesaikan dokumentasi-dokumentasi guaman. Surat-surat tawaran secara jelasnya tertakluk kepada memenuhi syarat-syarat terdahulu. Pihak-pihak masih dalam perundingan apabila kemudahan tersebut dibatalkan oleh defendan walaupun surat tawaran sudahpun diterima oleh plaintif. Tiada perjanjian muktamad yang dimeterai di antara plaintif dan defendan. Penerimaan tawaran tersebut oleh plaintif tidak muktamad dan tidak layak untuk menukarkan tawaran defendan kepada perjanjian (lihat perenggan 27 & 34).

(3) Dokumen-dokumen cagaran tersebut tidak dimeterai di antara pihak-pihak. Seksyen 60(1) Akta Institusi Perbankan dan Kewangan 1989 ('AIPK') melarang mana-mana institusi kewangan daripada menerima kemudahan kredit tanpa cagaran. Defendan akan melanggar AIPK sekiranya dia meneruskan kontrak tanpa cagaran (lihat perenggan 35).]

Notes

For cases on charge, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2105–2127.

For cases on conditional offer, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 4507–4516.
For cases on formation subject to contract, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3718–3725.

Cases referred to

Affin Credit (M) Sdn Bhd v Yap Yuen Fui [1984] 1 MLJ 169, FC (refd)
Ayer Hitam Tin Dredging Malaysia Berhad v YC Chin Enterprises Sdn Bhd [1994] 2 MLJ 754, SC (refd)
Bank Bumiputra Malaysia Bhd Kuala Terengganu v MAE Perkayuan Sdn Bhd & Ors [1993] 2 MLJ 76, SC (distd)
Charles Grenier Sdn Bhd v Lau Wing Hong [1996] 3 MLJ 327, FC (not folld)
Kam Mah Theatre Sdn Bhd v Tan Lay Soon [1994] 1 MLJ 108, SC (refd)
Lee Chin Kok v Jasmine Arunthu Allegakoen & Ors [2000] 4 MLJ 481; [2004] 4 CLJ 13, SC (refd)
Low Kar Yit & Ors v Mohamed Isa & Anor [1963] MLJ 165, HC (refd)
Masters v Cameron (1954) 91 CLR 353, HC (folld)
Von Hatzfeldt-Wildenburg v Alexander [1912] 1 Ch 284 (refd)

Legislation referred to

Banking and Financial Institutions Act 1989 s 60(1)
Contracts Act 1950 s 6(c), 7(a)
Co-operative Societies Act 1993

Peter KC Lee (Lee & Associates) for the plaintiff.
Munirah Ahmad Bashir Khan (Angela Ubu & Associates) for the defendant.

Abdul Rahman Sebli JC:

[1] The issue to be tried in this case is whether there exists a legally binding agreement between the plaintiff and the defendant.

THE FACTS

[2] The plaintiff is an investment subsidiary company of the Koperasi Pekerja-Pekerja Kerajaan Sabah Bhd, a co-operative registered under the Co-operative Societies Act 1993. The defendant is a commercial bank operating under Islamic principles.

[3] By letter dated 11 August 2001 the defendant offered banking facilities to the plaintiff known as Facility I in the sum of RM9m bridging finance comprising of RM3m for the purpose of redeeming two charged land titles from Borneo Mortgaging Finance Bhd and RM6m to part finance the development of 400 units of mixed housing and apartments on the said

lands. Facility II is a performance guarantee of RM1.5m in favour of the Ministry of Local Government and Housing being 5% of the development costs of RM29,759,010 for phase I of the housing development project. The offer letter is at ABD182–193. The plaintiff duly accepted the offer ('ABD196').

[4] At the request of the plaintiff the offer in respect of Facility I was amended by the defendant by substituting RM4m (from the original RM5m) for the redemption of the two charged titles and RM5m (from the original RM4m) for the part financing of the 400 units of houses (ABD194–205). This amendment was conveyed by letter dated 9 October 2001 (ABD194–195). The plaintiff duly accepted the amended offer. In the same letter the defendant made it clear that 'All other terms and conditions shall remain unchanged'. The unchanged terms and conditions refer to the terms and conditions in the offer letter dated 11 August 2001.

[5] It was an express term of the amended offer that the plaintiff should utilise Facility I within 12 months from the date of execution of the security documents and that the plaintiff should repay Facility I to the defendant within 30 months.

[6] By letter dated 26 August 2002 (ABD483) whilst the security documents were being prepared, the plaintiff requested the defendant to vary the development cost for Facility II from RM29,759,010 to RM28,000,000. At around the same time the defendant discovered that one of the landed properties had been charged to Maybank and this was never revealed by the plaintiff to the defendant earlier.

[7] The plaintiff commenced preliminary works on the site in reliance upon the letters of offer dated 11 August 2001 and 9 October 2001 respectively despite the fact that no formal written agreement was executed and despite the fact that the legal documents had not been executed between the parties.

[8] By letter dated 16 December 2002 the plaintiff informed the defendant of the mobilisation of all equipment on the two lands by the plaintiff's contractors and had enquired about the delay in the drawdown of the facility. In response the defendant by letter dated 27 February 2003 informed the plaintiff that they were waiting for a third party opinion on the facilities in order to update the defendant's financing committee.

[9] On 6 May 2003 the plaintiff wrote to the defendant informing, amongst others, that the vendors of the two lands intended to rescind the sale

and purchase agreements and to sell the lands to other parties and had thus requested the plaintiff to expedite drawdown of the facility.

[10] By letter dated 21 August 2003 the defendant informed the plaintiff that the facilities previously offered to them were withdrawn and cancelled (ABD210). The legal and security documents had not been signed at the time of the cancellation and the facilities had not been disbursed.

[11] According to the plaintiff the cancellation of the facilities resulted in them failing to purchase the two lands and that in consequence they were forced to abandon the housing development on the said lands. The plaintiff claims that they suffered loss of RM12,986,746.05 as a result of the defendant's action.

THE ISSUE

[12] The issue is whether the defendant was in breach of contract when it cancelled the facilities. The plaintiff's proposition is this: If a bank offered a loan to its customer for a specific purpose and the customer accepted the offer and all its terms and conditions, a contract of loan is created and the bank is bound by such contract. The bank who reneged on its obligations by refusing or failing to sign or allow the customer to sign the security loan documents which had been prepared by its solicitors is liable to compensate the customer for the loss it suffered if the loan is cancelled.

THE PLAINTIFF'S ARGUMENT

[13] The plaintiff's case is that since the amended letter of offer was accepted by the plaintiff on 26 October 2001, a legally binding contract of loan had been concluded between the plaintiff and the defendant, subject only to the conditions precedent for the disbursement of the loan including the security loan documents mentioned in the letter of offer. According to the plaintiff it did not matter that the security loan documents had not been signed by the plaintiff on 16 August 2002 because the plaintiff's acceptance of the amended letter of offer itself constituted a contract binding the plaintiff and the defendant to join in bringing the formal documents into existence and then to execute them. Reliance was placed on the Supreme Court case of *Bank Bumiputra Malaysia Bhd Kuala Terengganu v MAE Perkayuan Sdn Bhd & Ors* [1993] 2 MLJ 76.

[14] It is the plaintiff's contention that the defendant was in breach of contract when it unilaterally withdrew and cancelled the loan by its letter dated 21 August 2003 (ABD211) without giving any valid reason.

THE DEFENDANT'S ARGUMENT

[15] The defendant on the other hand contended that a binding and enforceable contract had not come into existence. It was submitted that no written agreement was executed as negotiations between the plaintiff and the defendant had broken down because the defendant found out that the plaintiff had breached their warranty and had misrepresented the defendant on their financial standing. The plaintiff had warranted and represented to the defendant that from the time they applied for the facilities right up to the time of drawdown, their cash flow and financial position were sound (ABD231–248) when in fact their financial position was deteriorating.

[16] The plaintiff had also failed to disclose to the defendant prior to the issuance of the letters of offer that one of the lands had been charged to Maybank. This is a material non-disclosure because the purpose of Facility I was to redeem the two lands from Borneo Housing Finance Bhd, not from Maybank. Facility I did not mention anything about Maybank.

[17] The defendant referred to the documents at ABD466–482, ABD484–493 and ABD505 to show that the parties were still in the midst of negotiation on the 'Documentations' clause of the offer letter and that therefore no contract had been concluded.

[18] It is the defendant's case that the two letters of offer dated 11 August 2001 and 9 October 2001 were conditional letters of offer, meaning to say the plaintiff must still fulfill all the conditions precedent and other terms and conditions stipulated therein notwithstanding that they had accepted the offer. One of the conditions precedent is that all legal documentations were to be executed as stipulated under the 'Documentations' clause of the letters of offer (ABD186, ABD200). The legal documents required to be executed were the following:

(a) Al-Istisna purchase agreement between the bank and the plaintiff;

(b) Al-Istisna sale and purchase agreement between the plaintiff and the bank;

(c) charge documents for Istisna sale;

(d) undertaking for Istisna purchase;

(e) guarantee documents for Istisna sale;

(f) deed of assignment and or irrevocable undertaking letter;

(g) memorandum of deposit; and

(h) any other legal documentation as advised by the bank's legal advisor.

[19] In his witness statement DW1 testified as follows:

Q: What is the condition precedent of the said amended letter of offer Al-Istina (Bridging loan) and the Guarantee?

A: As stated at pages 4 and 7 of the said amended letter of offer wherein the most important part is that the execution of all relevant legal documentations by the plaintiff and the defendant as stipulated under the 'Documentations' clause in the said amended letter of offer need to be complied with.

COURT'S FINDINGS

[20] The plaintiff does not dispute that these legal documents have not been executed by the parties. Having regard to the terms of the letters of offer my view is that it could not have been the intention of the parties that the conditions precedent could be disregarded in the execution of the agreement. Since the parties' expressed intention was that the agreement was subject to the execution of the legal documents a legally binding contract could only come into existence if this condition precedent had been fulfilled. Until then the two letters of offer remained expressions of willingness on the part of the defendant to offer banking facilities to the plaintiff.

[21] I am unable to accept the plaintiff's contention that the conditions precedent were merely conditions for disbursement and not for approval. The testimony of PW1 that the conditions precedent were conditions for disbursement and not for approval is his own opinion. Whether it is necessary for the conditions precedent to be fulfilled in order to create a binding contract is for the court to decide having regard to all the circumstances of the case.

[22] In my view the plaintiff's acceptance of the letters of offer would only bind the defendant if and when the conditions precedent have been fulfilled. Section 6(c) of the Contracts Act 1950 provides that a proposal is revoked by the failure of the acceptor to fulfill a condition precedent to acceptance.

[23] Clause 4 of the conditions precedent of the two letters of offer further stipulates that the defendant bank shall receive in form and substance, to the satisfaction of the bank, the following documents:

(a) the plaintiff's memorandum of article and association, Form 24, Form 44 and Form 49;

(b) the plaintiff's board resolution authorising the following:

(i) acceptance of the facility;

(ii) a list of persons to execute the documents relating to the facility together with their specimen signatures; and

(iii) that the common seal of the customer be and is authorised to be affixed on all documents relating to and/or arising out of the facility.

[24] None of the documents referred to in cl 4 above had been proved to have been provided to the defendant.

[25] The decision in *Bank Bumiputra Malaysia Bhd Kuala Terengganu* relied upon by the plaintiff must be confined to its own peculiar facts and circumstances. In that case it is clear that a binding contract had been executed between the parties. Further, the RM2.1m loan had been disbursed by the bank. It is also clear in that case that the first respondent was not obliged under the agreement to pay interest during the bridging period, which expired in 1984. Therefore the appellant, by recalling the loan mid-term on the ground that interest had not been serviced by the first respondent, had committed a breach of agreement. The factual background between *Bank Bumiputra Malaysia Bhd Kuala Terengganu* and the present case is totally different. The issues of law for the court's determination are also different.

[26] In the present case the loan had not been disbursed and the legal documentations had not been executed and it was a condition precedent that the legal documents must be executed. The court must give effect to this condition as it was the expressed intention of the parties. To ignore this condition would be to rewrite the terms of the letters of offer.

[27] It is improbable that a banking institution like the defendant would have agreed to enter into an agreement without finalising the legal documentations. The offer letters were clearly subject to the fulfillment of the conditions precedent. In *Kam Mah Theatre Sdn Bhd v Tan Lay Soon* [1994] 1 MLJ 108 the Supreme Court held, on the facts of that case, that there was no contract at all because the relevant document was dependant on the signing of a formal contract to be further negotiated and approved by both parties. It was also held that evidence of surrounding circumstances, background and negotiations between parties is relevant to show that there was no contract or no concluded and binding agreement at all.

[28] Learned counsel for the plaintiff submitted that *Kam Mah Theatre* and *Lee Chin Kok v Jasmine Arunthu Allegakoen & Ors* [2000] 4 MLJ 481; [2004]

4 CLJ 13 cited by learned counsel for the defendant are not relevant as these two cases are concerned with letters marked 'Subject to Contract' and 'Without prejudice and Subject to Contract'. I do not see the irrelevance of the two cases because the offer in the present case was subject to the express terms and conditions stated in the letters of offer.

[29] In *Ayer Hitam Tin Dredging Malaysia Berhad v YC Chin Enterprise Sdn Bhd* [1994] 2 MLJ 754 the respondent entered into negotiation with Malaysia Mining Corporation Bhd, a majority shareholder of the appellant, to develop and construct low cost houses and shop houses for the appellant's workers. On 19 September 1984, the appellant wrote to the respondent accepting the respondent's proposal in undertaking the said project but subject to certain terms and conditions stipulated in the said letter. One of the terms of the agreement was that there be a formal agreement in writing entered into between the parties incorporating all the relevant terms and conditions proposed by the appellant in the letter of proposal.

[30] The respondent commenced preliminary works on the site in reliance upon the letter of 19 September 1984 despite the fact that no formal written agreement was executed. The parties continued with the negotiations as to the terms of the agreement and a draft written agreement was forwarded to the respondent for their approval. However no written agreement was executed as negotiations between the appellant and the respondent broke down because both parties could not agree as to who should pay for the survey fees.

[31] The respondent brought an action against the appellant for damages for breach of contract on the basis that the letter dated 19 September 1984 constituted a binding contract. The learned trial judge allowed the respondent's claim and the appellant appealed to the Supreme Court. In allowing the appeal the Supreme Court held, inter alia, that having regard to the several essential matters referred to in the letter dated 19 September 1984 which still remained to be settled between the parties and especially the condition that a formal written agreement be executed was yet to be fulfilled, the letter dated 19 September 1984 on its true construction did not constitute a contract binding in law between the parties but was only a record of terms upon which they were agreed as a basis for the negotiation of a contract.

[32] In delivering the judgment of the court Edgar Joseph Junior SCJ cited with approval the following passage in *Von Hatzfeldt-Wildenburg v Alexander* [1912] 1 Ch 284:

> It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract.

[33] In *Low Kar Yit & Ors v Mohamed Isa & Anor* [1963] MLJ 165 the following passage can be found at p 172:

> That the execution of a subsequent document in the nature of a formal contract, possibly containing such terms as were not included in the option, was within the contemplation of the parties is clearly demonstrated by the fact that upon the exercise of the option the solicitors of the parties proceeded to draw up a formal contract was drawn up and signed by the plaintiff although it was not signed by the defendants. There is overwhelming authority for the proposition that this subsequent agreement could not be said to have been agreed upon until it was executed by the defendant by subscribing their signatures to it.

[34] In the present case it is clear to me that the parties were still in negotiation when the facility was cancelled by the defendant although the two letters of offer had been accepted by the plaintiff. Obviously no final agreement had been reached between the plaintiff and the defendant. This is borne out by the fact that after the letters of offer were issued and accepted, the plaintiff requested for a variation of the development costs under Facility II from RM29,759,010 to RM28,000,000 (ABD189 and ABD203). By this act the plaintiff must be taken to intend that the offer was still open for negotiation. The plaintiff's acceptance of the offer was therefore not absolute and unqualified to convert the defendant's proposal into a promise: s 7(a) of the Contracts Act 1950.

[35] Further, there is no doubt that the security documents had not been executed between the parties. In this regard s 60(1) of the Banking and Financial Institutions Act 1989 ('the BAFIA') is relevant. This provision prohibits any financial institution from giving credit facility without security. The defendant would be in breach of the BAFIA if it were to go ahead with the contract without security.

[36] The plaintiff claimed that the security document had been executed but failed to provide proof that it had in fact been done. Specifically the

plaintiff failed to produce and prove the letter dated 16 August 2002 which PW1 claimed was the letter by Messrs Mahap Jelani & Co acting for the defendant informing them that the security documents were ready for signing. In any event I accept DW1's testimony that the legal documentations including the security documents have not been executed between the parties.

[37] In *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui* [1984] 1 MLJ 169, it was held that where a statutory provision sets out a condition precedent before an offer can be accepted, non-compliance with that condition will result in no contract whatsoever.

[38] Perhaps more importantly, by para 15 of the plaintiff's reply to the statement of defence dated 7 September 2004 (p 24 of the bundle of pleadings) the plaintiff admitted that the facility agreement had not been executed and that there is no legally binding document between the parties. Paragraph 15 is as follows:

> The Plaintiff further states that until current date the Facility Agreement has not been executed as such it is not a legally binding document to which reference can be made by the Defendant.

[39] It is therefore a contradiction in terms for the plaintiff to now assert that a legally binding contract had been entered into between them and the defendant in connection with the loan facility.

[40] The plaintiff argued in the alternative that an 'open contract' had been reached between the plaintiff and the defendant since the amended letter of offer had disclosed the names of the parties, the description of the loan and the securities for the loan and the loan amount followed by the plaintiff's acceptance of the amended offer together with the terms and conditions therein. For this proposition the plaintiff relied on the Federal Court decision in *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327. The defendant's answer to this argument is that the issue of 'open contract' was never pleaded by the plaintiff and should therefore be disregarded. I agree with the defendant. Even if I were to consider the issue of 'open contract' *Charles Grenier Sdn Bhd* is not all favourable to the plaintiff. Having regard to the terms and conditions of the letters of offer I am of the view that the present case belongs to the third class of cases referred to by Dixon CJ, McTierman and Kitto JJ in their joint judgment in *Masters v Cameron* (1954) 91 CLR 353, which is: 'one in which the intention of the parties is not to make a concluded bargain at all, unless and until they execute a formal contract.'

[41] For reasons stated above I found that the plaintiff failed to prove its case against the defendant on the balance of probability. Accordingly I dismissed the plaintiff's claim with costs to the defendant.

Plaintiff's claim dismissed with costs.

Reported by Kanesh Sundrum